



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

KIN/173054

PRELIMINARY RECITALS

Pursuant to a petition filed March 23, 2016, under Wis. Stat. § 48.57(3m)(f), and Wis. Admin. Code § DCF 58.08(2)(b), to review a decision by the Professional Services Group - PSG in regard to Kinship Care, a hearing was held on April 19, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether PSG correctly ended the Petitioner's kinship care benefits due to non-cooperation.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED], Kinship Assessor
PSG Professional Services Group
1126 South 70th Street, Suite N200
West Allis, WI 53214

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.
2. On March 22, 2016 PSG sent the Petitioner a notice that it was ending kinship benefits for [REDACTED] because the Petitioner did not cooperate with the agency. (Exhibit 1)

3. The Petitioner filed an appeal that was received by the Division of Hearings and Appeals. (Exhibit 2)
4. The Petitioner was due for an annual assessment and on March 14, 2016, [REDACTED] conducted a home visit. (Testimony of [REDACTED] and the Petitioner)
5. The visit became contentious and Petitioner's significant other, [REDACTED], asked [REDACTED] to leave, because he thought she was being rude. (Testimony of the Petitioner, [REDACTED] and [REDACTED])
6. [REDACTED] was at the home for 1 hour and 15 minutes, but left before the annual assessment could be completed. (Testimony of [REDACTED]; See Exhibit 2)

DISCUSSION

PSG indicated that it terminated the Petitioner's kinship care benefits because she, "did not comply with the requirement to cooperate with the annual reassessment process." (See Exhibit 1)

The Kinship Care benefit is a monthly public assistance payment of \$232 per child paid to a qualified relative who otherwise bears no legal responsibility for the support of the child. The program is established under *Wis. Stats.* §48.57(3m) and (3n) which sets forth the eligibility requirements. Subsection (3n) applies to long-term kinship care relatives who are court appointed guardians of a child.

Wis. Stats. §48.57(3n)(am)5. provides, as a condition of eligibility, that:

The kinship care relative cooperates with the county department or departments in the application process, including applying for other forms of assistance for which the child may be eligible.

Wis. Admin. Code §DCF 58.04(3) states that:

...An applicant shall cooperate with the agency in the application process and a kinship care or long-term kinship care relative shall cooperate with the agency in the review process...

In addition under *Wis. Stats.* §48.57(3n)(am) 2. And 4. , the agency must inspect the long-term kinship care relative's home, interview him/her and conduct background investigations of the kinship care relative and any other adult residing in the home. *See also Wis. Admin. Code* §58.15(1)

In order to continue receiving benefits, the kinship care relative must undergo an annual reassessment:

DCF 58.13 Reassessment of eligibility.

(1) FREQUENCY OF REASSESSMENT. An agency shall reassess eligibility of a kinship care relative for the kinship care program at least every 12 months after the date the agency initially began making payments to the kinship care relative, to determine if the requirements under ss. [DCF 58.04](#) and [58.10](#) continue to be met.

In addition, those receiving long-term care kinship benefits, must also undergo an annual review, to make sure the conditions of the Long-Term Kinship Care Agreement have not changed. *Wis. Admin. Code* §58.16

Because the Petitioner and/or her significant other asked [REDACTED] to leave the residence, the required annual reassessment/annual review never got completed. As such, it is found that the Petitioner failed to

co-operate with the reassessment process in violation of *Wis. Stats.* §48.57(3n)(am)5., *Wis. Stats.* §48.57(3n)(am) 2. And 4., and *Wis. Admin. Code* §§DCF 58.04(3), 58.13 and 58.16, above.

The Petitioner, in her testimony, explained that she felt that [REDACTED]'s questions were unnecessary, because they had been previously answered when Petitioner first began receiving kinship benefits for her grandchild. The Petitioner testified that [REDACTED] called her a liar. The Petitioner argued that she and her significant other were justified in asking [REDACTED] to leave, because [REDACTED]'s questions were unreasonable and offensive and because [REDACTED] was generally, rude.

The Petitioner's argument is an equitable one, meaning it argues for a different outcome, based upon what the Petitioner thinks is fair, not what the law states. However, administrative law judges do not have equitable authority, but must instead apply the law as it is written. Even if I did have equitable authority, I would not find in favor of the Petitioner, because she could have contacted PSG and asked to complete the assessment/renewal with a different assessor, and there is no indication in the record that the Petitioner did this.

Petitioner may always reapply for kinship benefits, and ask for a different assessor, if she believes she still qualifies for benefits.¹

CONCLUSIONS OF LAW

PSG correctly ended the Petitioner's kinship care benefits due to non-cooperation.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

¹ Theoretically, the Petitioner could also start the process, under *Wis. Admin. Code* §58.09, for requesting a good cause exemption for her non-cooperation, by completing the request form for PSG. Then, if PSG denies the exemption, the Petitioner can file a NEW appeal.

However, it should be noted that good cause for non-cooperation is allowed only in very limited circumstances under *Wis. Admin. Code* DCF §58.09(4). An exemption may be granted only for one of the following reasons:

- (a) The kinship care or long-term kinship care relative's cooperation can be reasonably anticipated to result in any of the following:
 - 1. Physical harm of a serious nature to the child for whom the benefit is sought or to the kinship care or long-term kinship care relative with whom the child is living.
 - 2. Emotional harm of a serious nature to the child for whom the benefit is sought or to the kinship care or long-term kinship care relative with whom the child is living.
- (b) One of the following circumstances exists and it can be reasonably anticipated that proceeding to secure child support would be detrimental to the child:
 - 1. The child for whom support is sought was conceived as the result of incest or sexual assault.
 - 2. A petition for adoption of the child has been filed with a court.
 - 3. The parent or parents are being assisted by a social services agency in deciding whether to terminate parental rights and the discussions have not gone on for more than 3 months.

Alleged misconduct of an assessor is not a reason for which a good cause exemption for non-cooperation is allowed.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 27th day of June, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on June 27, 2016.

Professional Services Group - PSG

DCF - Kinship Care

DCF - Kinship Care